

Yacovone, Krista

From: Mintzer, Michael
Sent: Tuesday, June 16, 2015 11:38 AM
To: rbrager@bdlaw.com; whatfield@gibbonslaw.com
Cc: Cardiello, Frank
Subject: LCP Chemicals Site: Conference of June 12, 2015 Concerning CERCLA 106 Order
Attachments: 20150616 LCP Chemical Site-Letter CERCLA UAO Conference.pdf

I am writing following the conference held at EPA offices on June 12, 2015 concerning the CERCLA 106 administrative order for remedial design at the LCP Chemicals Superfund site. Please see my letter which is attached to this email.

*Michael A. Mintzer
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
212-637-3168*



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
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NEW YORK, NY 10007-1866

June 16, 2015

William S. Hatfield, Esq.
Gibbons P.C.
One Gateway Center
Newark, NJ 07102-5310

Robert Brager, Esq.
Beveridge & Diamond PC
201 North Charles Street, Suite 2210
Baltimore, MD 21201-4150

Re: CERCLA Administrative Order Conference, U.S. EPA Index No. CERCLA-02-2015-2015, LCP Chemicals, Inc. Superfund Site, Union County, New Jersey

Dear Messrs. Hatfield and Gibson:

I am writing to memorialize the substance of the conference which occurred on June 12, 2015, regarding the above-referenced Site. As you know, an administrative order, EPA Index Number CERCLA-02-2015-2015 (the "Order"), was issued on May 20, 2015 to your clients ISP Environmental Services, Inc. ("IES") and Praxair, Inc. ("Praxair") requiring that your respective clients perform the remedial design of the remedy selected by EPA in a February 2014 record of decision (the "ROD") for the site. The Order was issued by the U.S. Environmental Protection Agency ("EPA") pursuant to Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9606(a). Consistent with the terms of the Order, you requested a conference regarding the Order. The conference participants are listed on the attached copy of the participant list, and the conference was conducted consistent with the Order and EPA policy.

I served as EPA's neutral during the conference and, as I stated at the conference, I have had no previous involvement with this Site or its supervisory chain other than to review the Order, the ROD, and a statement of work which is attached to the Order. I reviewed these only for and in anticipation of the conference.

The purpose of the conference, as I explained at the outset, was to provide your clients with an opportunity to express issues or concerns involving the implementation of the work required by the Order and the extent to which your clients intended to comply with the Order. In response to your requests, I acknowledged that the Respondents would also have the opportunity to discuss issues related to their respective legal responsibility to perform the work required by the Order, even if such discussion exceeded the scope of the conference as set forth in paragraph 102 of the Order. I explained that my role at the conference was to listen to the concerns raised, to participate in discussions, as necessary and if helpful, and ultimately to make a recommendation to the Director of EPA Region 2's Emergency and Remedial Response Division ("ERRD"), the

official delegated with the authority to issue the Order, as to whether the Order should become effective in accordance with its terms, or whether it should be delayed, stayed, modified, or rescinded.

To summarize the issues raised at the conference by the respondents:

Praxair presented a set of drawings purporting to show, based on data from the remedial investigation, concentrations of mercury waste present at various depths in soils at the site, both at the 2.1 acre portion of the Site that had previously been leased to and operated by Praxair ("Praxair facility"), as well as on the balance of the site. Praxair asserted that the drawings demonstrated that any contamination beyond the boundaries of the Praxair facility did not originate from the Praxair facility. Praxair also presented a Figure depicting roof surface sample points which Praxair stated demonstrated that contamination emitted from the Praxair facility would not have migrated from the Praxair facility to the other portions of the site. Praxair concluded that although the company acknowledged liability for the Praxair facility, its CERCLA liability was divisible to the Praxair facility, and that it was not liable for the contamination on other portions of the site. John Gorin, EPA's Remedial Project Manager for the site said that he would review the materials presented by Praxair at the conference.

IES stated that it was not an owner or operator of the site, was not a successor to GAF, was not a CERCLA 107(a) party as alleged in the Order, nor was it a guarantor of CERCLA liabilities attributable to GAF. IES asserted that it had entered into the 1999 administrative order on consent for the remedial investigation at the Site as a "volunteer" at a time that IES was owned or controlled by GAF. Since that time, IES had been sold to Ashland and, although IES remains willing to fund a portion of the costs of the remedial design and remedial action at the site, IES believes that EPA should add additional responsible parties to help fund or perform the work, most notably the United States, which had seized General Aniline and Film during the Second World War and then operated its facility at the site for two decades until 1965. Frank Cardiello, EPA attorney for the site, said that EPA had reviewed liability information including information provided by IES and concluded that IES was a potentially responsible party for the site as successor to GAF and guarantor of the CERCLA obligations of GAF at the site and that IES had said as much in writing to EPA through its lawyers. Mr. Cardiello also said that the remedial design required by the Order represents a small portion of the total site costs, that remedial design activities needed to promptly get underway at the site, and that further investigation for additional potentially responsible parties could be done before the implementation of the more expensive remedial action, or PRP activities could be initiated by respondents.

Following the conference, I discussed the positions taken by the respondents and by EPA at the conference with Nicoletta DiForte, Deputy ERRD Director for Enforcement. Ms. DiForte has decided that implementation of the Order be stayed until June 26, 2015 in order to give EPA time to consider positions presented by Praxair and IES at the conference including through review of the materials presented by Praxair and IES at the conference.

Therefore, the Order will become effective on June 26, 2015, unless on or prior to that date, EPA advises respondents otherwise in writing. Please note that if the Order becomes effective on June 26, 2015, the Notice of Intent to Comply should be sent as provided by Paragraph 43 of the

Order.

If you have any question concerning this letter or the substance of the conference, please feel free to contact me at (212) 637-3168. Any questions relating to the implementation of the Order should be directed to Frank Cardiello at (212) 637-3148.

Sincerely,

A handwritten signature in blue ink, appearing to read "m. to. mintzer", with a long horizontal flourish extending to the right.

Michael A. Mintzer
Assistant Regional Counsel
New York/Caribbean Superfund Branch
Office of Regional Counsel

Cc: Frank Cardiello, Esq.

Attachment

**CERCLA section 106(a) UAO Conference for Remedial Design
LCP Chemicals, Inc. Superfund Site
Union County, New Jersey
Date: June 12, 2015
Time: 3:00pm-4:30pm
RM 1721**

Participant List

[illegible]

**CERCLA section 106(a) UAO Conference for Remedial Design
LCP Chemicals, Inc. Superfund Site
Union County, New Jersey
Date: June 12, 2015
Time: 3:00pm-4:30pm
RM 1721**

Participant List

[illegible]